

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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REGINALD G. MCFADDEN,

Petitioner,

MEMORANDUM & ORDER

15-CV-0119 (JS)

-against-

ANDREW CUOMO, Governor, New York,

Respondent.

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APPEARANCES

For Petitioner: Reginald G. McFadden, pro se
95A6279
Attica Correctional Facility
639 Exchange Street
P.O. Box 149
Attica, NY 14011

For Respondent: No appearance.

SEYBERT, District Judge:

On January 5, 2015, petitioner Reginald G. McFadden ("Petitioner"), appearing pro se, filed a Petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254, accompanied by an application to proceed in forma pauperis. The application to proceed in forma pauperis is GRANTED.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court has conducted an initial review of this Petition and has determined that this Petition should not be summarily dismissed pursuant to Rule 4. Accordingly, it is ORDERED that the Clerk of the Court shall serve, by electronic transmission, a copy of this Order, the underlying Petition, and Supporting Affidavit, on the Attorney General of the State of New York, the attorney for the Respondent. It is further ORDERED that Respondent shall file a

limited answer to the Petition within thirty (30) days of the date of this Order addressing the issue of whether Petitioner must first seek permission from the Court of Appeals in order to file this Petition in the District Court, see 28 U.S.C. § 2244(b) (2); see also Torres v. Senkowski, 316 F.3d 147, 151 (2d Cir. 2003) (the Antiterrorism and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications") unless Respondent concedes that this Petition is not a second or successive Petition. If Respondent concedes that the Petition is properly filed in this Court, Respondent shall file a complete and entire answer to the Petition within sixty (60) days of the date of this Order. In such case, Respondent shall prepare the state court record to be produced and filed with the Court. No reply is required, however, should Petitioner want to reply, he shall serve a reply on Respondent's counsel and with the Court within thirty (30) days of his receipt of the answer.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: February 12, 2015
Central Islip, New York